S.B. CIVIL WRIT PETITION No. 7253/2005.
(M/s. Gulshan Infra Projects Pvt. Ltd. Vs. State of Raj. & Ors.)

DATE OF ORDER : 14.11.2007.

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. C.P.Soni, for the petitioner.
Mr. RS Mankad, for respondents.

1. Heard the learned counsels.

2. The petitioner has challenged in this writ petition demand of conversion charges from him since he applied for change of land use from residential to commercial for construction of a hotel on the land in question. The conversion charges have been demanded by the respondents Municipal Council, Udaipur vide Annex.4 dated 9.12.2005 to the extent of Rs. 14,90,592.90. Under the orders passed by this Court on 8.3.2006, the petitioner has already paid a sum of Rs. 10 lacs against the said conversion charges.

3. The contention raised by learned counsel for the petitioner is that since he purchased the said plot from his Predecessor-in-Title, namely Bal Chand S/o Giyogal Ji Pahalvani and the registered sale deed did not stipulate any such condition, he is not required to pay such conversion charges.

4. This contention, in the opinion of this Court has no force. It is beyond the pale of doubt that nobody can pass a better title than he himself has. The conversion charges have been demanded by the

respondent Municipal Council under the statutory rules from him under Section 173A of the Rajasthan Municipalities Act, 1957, the petitioner has failed to make out any case of falling in the exception of Section 173A. Section 173A of the said Act is reproduced hereunder :

> **173-A Restriction on change of use of land and power of the State Government to allow change of use of land**.-(1) No person shall use or permit the use of any land situated in any Municipal area, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government, any Municipality, any other local authority in accordance with any law for the time being in force or, otherwise than as specified under a Master Plan, wherever it is in operation.
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> (2) In case of any land not allotted or sold as aforesaid and not covered under in a Municipal area for the purpose other than that for which such land use was or is permissible, in accordance with the Master Plan, wherever it is in operation, or under any law for the time being in force.
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> (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the State Government or any authority authorized by it by notification in the Official Gazette, may allow the owner or holder of any such land to have change of use thereof, if it is satisfied so to do in public interest, ***on payment of conversion charges at such rates and in such manner as may be prescribed*** with respect to the following charges in use:-
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> (i) from residential to commercial or any other purpose; or
> (ii) from commercial to any other purpose; or
> (iii) from industrial to commercial or any other purpose; or;
> (iv) from cinema to commercial or any other purpose.
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> Provided that rates of conversion charges may be different for different areas and for different purposes."

5. Learned counsel for the petitioner has relied upon two judgments in ***Pareshar Soni Vs. State of Rajasthan & ors.*** 2005 (6) RDD 1990 (Raj.) and ***Ashok Kumar Bakliwal & ors. Vs. Municipal Board, Abu Road & Ors.*** 2007 (1) RLW 405. The facts of the present case are entirely different. It is not the case of the petitioner that he was allotted or sold the plot of land in question by the State Government or the Municipality or that such change of land use is as per Master Plan in force, and therefore, the case of the petitioner cannot fall in the exception of sub-section (3) of Section 173A as held in the aforesaid two judgments on the facts of those cases. The judgments cited by learned counsel for the petitioner, therefore, have no application to the facts of the present case.

6. Since the petitioner admittedly, intends to change the land use from residential to commercial, the demand of conversion charges by the respondent Municipal Council appears to be in accord with the relevant rules and provisions of Section 173A.

7. This Court finds no force in the writ petition and the same is accordingly dismissed.

(Dr.VINEET KOTHARI)J.

Sr.No.22
/gandhi